

3/20/2019

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION**

Clerk, U.S. District Court  
District of Montana  
Helena Division

DAVID STEVEN BRAUN

Plaintiff,

vs.

BANK OF AMERICA,

Defendant.

**CV 18-70-BU-BMM-JCL**

**ORDER**

Plaintiff David Braun, appearing pro se, filed an amended Complaint on December 23, 2018. (Doc. 13.) Braun asserts that Bank of America engaged in various acts of misconduct. *Id.* Braun asserts the following six claims for relief against Bank of America: (1) failing to contact Braun prior to filing its state court debt collection action; (2) making numerous phone calls to Braun regarding the delinquent balance on his credit card; (3) failing to provide Braun with records relative to his credit card account; (4) unlawfully accessing and disseminating information from Braun's credit card account; (5) causing inaccurate and derogatory information to be placed on Braun's credit report; and (6) engaging in improper ex-parte communications with the judge presiding over the state court debt collection. *Id.*

Braun alleges that he has sustained financial damages and damages to his credit as a result of Bank of America's conduct. Braun's Complaint constitutes his third legal challenge to Bank of America's conduct. Bank of America moved to dismiss this action pursuant to the doctrine of res judicata. (Doc. 16.)

Magistrate Judge Jeremiah Lynch issued Findings and Recommendations in this matter on March 4, 2019. (Doc. 21.) Judge Lynch recommended that this action be dismissed as barred by the doctrine of res judicata. *Id.* at 9. Braun filed an objection to Judge Lynch's Findings and Recommendations on March 11, 2019. (Doc. 22.)

The Court reviews de novo Findings and Recommendations timely objected to. 28 U.S.C. § 636(b)(1). The Court reviews for clear error the portions of the Findings and Recommendations not specifically objected to. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). "A party makes a proper objection by identifying the parts of the judge's disposition that the party finds objectionable and presenting legal argument and supporting authority, such that the district court is able to identify the issues and the reasons supporting a contrary result." *Montana Shooting Sports Ass'n v. Holder*, 2010 WL 4102940, at \*2 (D. Mont. Oct. 18, 2010) (citation omitted). Where a party's objections constitute perfunctory responses argued in an attempt to engage the

district court in a reargument of the same arguments set forth in the original response, however, the Court will review the applicable portions of the findings and recommendations for clear error. *Rosling v. Kirkegard*, 2014 WL 693315 \*3 (D. Mont. Feb. 21, 2014) (internal citations omitted).

Braun argues that Judge Lynch incorrectly applied the doctrine of res judicata to all six counts contained in Braun's complaint. (Doc. 22 at 1.) Braun asserts that Judge Lynch merely "feels the motion [to dismiss] should be granted." (Doc. 22 at 1.) The Court determines that Judge Lynch carefully evaluated the doctrine of res judicata to Braun's claims. Judge Lynch determined that Braun has twice previously brought similar claims against Bank of America. Braun first asserted a counterclaim against Bank of America in Montana's Eighteenth Judicial District Court, Gallatin County. DV-15-576B. The district court dismissed Braun's claims and summary judgment was granted in Bank of America's favor. The Montana Supreme Court affirmed the district court's decision. *Bank of America, N.A. v. Braun*, 2017 WL 3600629 (Mont. 2017).

Braun brought his second action in this Court against Bank of America in 2017. CV-17-72-BU-BMM-JCL. Braun alleged that Bank of America engaged in numerous acts of misconduct regarding Braun's credit card. *Id.* The Court dismissed Braun's claims, in part, upon the doctrine of res judicata.

The Court finds no specific objections brought by Braun that do not attempt to relitigate the same arguments. Braun's objection reiterates the six counts alleged in his Amended Complaint. Braun further fails to make any legal arguments or provide supporting authority. The Court will review Judge Lynch's Findings and Recommendations for clear error. The Court finds no error.

**IT IS ORDERED:** Judge Lynch's Findings and Recommendations (Doc. 21) are **ADOPTED IN FULL**.

DATED this 20th day of March, 2019.



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Brian Morris  
United States District Court Judge